

CHAPTER NO. 186

HOUSE BILL NO. 2233

By Representative Haley

Substituted for: Senate Bill No. 3084

By Senator Leatherwood

AN ACT to amend Chapter 238 of the Acts of 1903, and any other acts amendatory thereto, relative to the levy of a privilege tax on the occupancy of any rooms, lodgings or accommodations furnished to transients by any hotel, inn, tourist camp, tourist court, tourist cabin, motel or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration in the City of Millington.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Chapter 238 of the Acts of 1903, and any other acts amendatory thereto, is amended by adding the following new section:

Hotel-Motel Tax

Section 15. (a) Definitions

As used in this act unless the context otherwise requires:

(1) "City" means the City of Millington, Tennessee.

(2) "Consideration" means the consideration charged, whether or not received, for occupancy in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged to or received from any person.

(3) "City Clerk" means the City Clerk of the City of Millington.

(4) "Hotel" means any structure or space, or any portion thereof, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist camp, tourist court, tourist cabin, motel or any place in which rooms, lodgings, or accommodations are furnished to transients for a consideration.

(5) "Occupancy" means the use or possession, or the right to the use or possession, of any room, lodgings, or accommodations in any hotel for a period of less than ninety (90) continuous days.

(6) "Operator" means the person operating the hotel whether as owner, lessee or otherwise.

(7) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock

company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(8) "Transient" means any person who exercises occupancy or is entitled to occupancy for any rooms, lodgings or accommodation in any hotel for a period of less than ninety (90) continuous days.

(b) Levy of Occupancy Tax.

The Legislative Body of the City of Millington is authorized to levy a privilege tax upon the privilege of occupancy in any hotel of each transient in any amount not to exceed three percent (3%) of the rate charged by the operator. Such tax is a privilege tax upon the transient occupying such room and is to be collected as provided in this act.

(c) Collection by Operation; Inclusion in Rate.

(1) Such tax shall be added by each operator to each invoice prepared by the operator for the occupancy of the hotel and given directly or transmitted to the transient for the occupancy of the operator's hotel. Such tax shall be collected by the operator from the transient and remitted to the City of Millington.

(2) The tax does not apply when a person has maintained occupancy for ninety (90) consecutive days or more.

(d) Remittance of Tax by Operator

(1) The tax levied shall be remitted to the City Clerk or his designee by all operators who lease, rent or charge for rooms or spaces in hotels within the City, and the City Clerk is charged with the duty of collection thereof, such tax to be remitted to such officer not later than the twentieth (20th) day of each month for the preceding month. The operator is hereby required to collect such tax from the transient at the time of the presentation of the invoice for occupancy, whether prior to occupancy or after occupancy as may be the custom of the operator, and if credit is granted by the operator to the transient, then the obligation to the City of such tax shall be that of the operator.

(2) For the purpose of compensating the operator in accounting for and remitting the tax authorized and levied pursuant hereto and the related ordinances of the City, the operator shall be allowed two percent (2%) of the amount of the tax due and accounted for and remitted to the City in the form of a deduction in submitting the report and paying the amount due by such operator, provided the amount due was not delinquent at the time of payment.

(e) Collection of Tax by City.

(1) The City Clerk shall be responsible for the collection of such tax and shall place the proceeds of such tax in the general funds account of the City. A monthly tax return shall be filed under oath with the City Clerk by the operator with such number of copies thereof as the City Clerk may reasonably require for the collection of such tax. The report of the operator shall include such facts and information as may be deemed reasonable for the verification of the tax due. The form of such report

shall be developed by the City Clerk and approved by the Board of Mayor and Aldermen of the City prior to use. The City Clerk may cause an audit of each operator in the City once per year and shall report on the audits made to the Board of Mayor and Aldermen of the City.

(2) The Board of Mayor and Aldermen is hereby authorized to adopt reasonable rules and regulations for the implementation of the provisions of this act.

(f) Disclosure of Tax.

No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rent, or that if added, any part will be refunded.

(g) Failure of Operator to Collect Tax.

Taxes collected by an operator which are not remitted to the City Clerk on or before the due dates shall be delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at the rate of twelve percent (12%) per annum, and is liable for an additional penalty of one percent (1%) for each month or fraction thereof such taxes are delinquent. Such interest and penalty shall become a part of the tax herein required to be remitted. Each occurrence of willful failure or refusal of an operator to collect or remit the tax or willful refusal of a transient to pay the tax imposed is unlawful and shall be punishable by a civil penalty not in excess of five hundred dollars (\$500.00). In addition, it is unlawful for any operator to knowingly file a false tax return, of which a violation shall be punishable by a civil penalty of not more than five hundred dollars (\$500.00).

(h) Rules and Regulations; Reports; Records.

(1) It is the duty of every operator liable for the collection and payment to the City of any tax imposed by this act to keep and preserve for a period of three (3) years all records necessary to determine the amount of tax due and payable to the City. The City Clerk, his designee or any accounting firm or accountant employed by the City, shall have the right to inspect such records at all reasonable times.

(2) In administering and enforcing the provisions of this act the City Clerk has as additional powers, those powers and duties with respect to collecting taxes as provided in Title 67 of Tennessee Code Annotated, or otherwise provided by law for County Clerks and/or municipal officers.

(3) Upon any claim of illegal assessment and collection, the taxpayer shall have the remedies provided in Tennessee Code Annotated, Title 67, Chapter 23, it being the intent of this act that the provisions of law which apply to taxes illegally assessed and collected under the authority of this act. The City Clerk shall also possess those powers and duties as provided in Tennessee Code Annotated, Section 67-1-707 for County Clerks with respect to the adjustments and refunds of such tax.

(4) With respect to the adjustment and settlement with taxpayers, all errors of taxes collected by the City Clerk under the authority of this act shall be refunded by the City.

(5) Notice of any tax paid under protest shall be given to the City Clerk, and suit may be brought for recovery of such tax against the Mayor of the City in such Mayor's official capacity.

(i) Allocation of Funds.

The proceeds of the tax authorized by this act shall be allocated to such funds as the Board of Mayor and Aldermen of the City shall direct.

(j) The privilege tax levied by this act shall be in addition to all other taxes levied or authorized to be levied whether in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now levied or authorized to be levied.

(k) The tax levied pursuant to the provisions of this act shall only apply in accordance with the provisions of Tennessee Code Annotated, Section 67-4-1425.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the governing body of the City of Millington. Its approval or non-approval shall be proclaimed by the Mayor of the City of Millington and certified to the Secretary of State.

SECTION 4. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective on January 1, 1999.

PASSED: April 29, 1998


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this day of 1998

DON SUNDQUIST, GOVERNOR

Pursuant to Article III, Section 18, of the Constitution of the State of Tennessee, the Governor had House Bill No. 2233 in his possession longer than ten (10) days, so therefore the bill becomes law without the Governor's signature.